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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

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COMMENTS OF RURAL CELLULAR ASSOCIATION AND THE ALLIANCE OF RURAL CMRS CARRIERS

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SUMMARY

The recommendation made by the Federal-State Joint Board on Universal Service to impose a cap on high-cost fund disbursements to Competitive Eligible Telecommunications Carriers should be rejected for four straightforward reasons: The cap is unnecessary, it is unsupported, it is harmful, and it ignores statutory mandates, judicial holdings, and Commission policy.

The cap is unnecessary because the high-cost fund is not in a state of "emergency," and the proposed cap is not needed to stave off the "dire jeopardy" of the fund becoming "unsustainable." The Joint Board's *Recommended Decision* is filled with these assertions but is virtually devoid of any information or analysis demonstrating that consumers—the intended beneficiaries of the Universal Service Fund program—would be harmed if a cap is not imposed.

To the contrary, there is evidence showing that (i) the trends in telephone service costs have been decreasing, compared to consumer prices for other services; (ii) average monthly rates for wireless and other telecommunications services (other than local exchange service) have continued to trend downward, even when the USF charge is taken into account; and (iii) even if the Joint Board's projections for fund growth were credible, this projected growth would not cause any significant increase in monthly telephone bills.

In addition, the Joint Board does not support its claim that the high-cost fund cannot be sustained, without a cap, over the period of the next 18 months. The Joint Board presents assurances that long-term universal service reform will finally be delivered by the Joint Board and the Commission by the end of 2008, so that the cap will need to be in place only for an

interim period. But the Joint Board does not explain why the fund cannot survive the *status quo* between now and then.

The proposed cap is unsupported because the Joint Board fails to back up its numbers. The Joint Board projects that a failure to impose the cap will lead to large increases in the level of CETC support in 2008 and 2009 (even if no new CETC designations are approved), but the Joint Board provide no explanation of the methodologies and calculations used to derive the projections upon which it relies. Further, the Joint Board points with alarm to the recent 2% increase in the contribution factor, and attempts to use this increase as further justification for the cap. But the fact is that more than 75% of this increase in the contribution factor does not relate in any way to increases in demand for high-cost support. The Joint Board simply has failed to present any real numbers or reasonable projections that show why a cap is necessary.

The cap is harmful because it would stall competition, deprive consumers of marketplace choices and cost savings, and threaten to divert attention and resources from the main effort of delivering long-term universal service reform. Cutting back high-cost support to CETCs (and, in a number of states, blocking the availability of CETC support altogether) will inevitably slow market entry in rural and high-cost areas. Anyone who has observed the Commission's longstanding efforts to foster the emergence and growth of competition in the telecommunications marketplace will understand the lost opportunities and economic damage that would follow in the wake of a high-cost fund CETC cap that narrows the opening for competitive alternatives.

Harm to consumer welfare would inevitably result from imposition of the proposed cap. There is ample evidence showing that consumer preferences are shifting rapidly toward wireless services, and these services—so long as there is sufficient build-out of wireless infrastructure—

can provide important benefits in rural areas. Imposition of a cap, however, would dampen investment in this infrastructure, slow the pace of wireless technology deployment, and deprive consumers of the benefits and cost savings associated with wireless service.

Finally, the proposed cap conflicts with the goals and objectives that have shaped universal service policy since enactment of the Telecommunications Act of 1996. The Act mandates that the Commission must pursue the twin goals of preserving and advancing universal service while also promoting competition in local markets, but the cap would force competition over to the side of the road. Judicial holdings mandate that the universal service program must treat all market participants equally so that the market—and not regulators—will drive the provision of services to consumers. The cap, however, would ignore this mandate by pinching the flow of high-cost support to competitive service providers.

And, most significantly, the cap would violate the Commission's principle of competitive neutrality. This principle is intended to benefit consumers by ensuring that no unfair advantage is given to any class of service providers receiving universal service support. The cap, however, would unravel this principle by giving a clear advantage to ILECs. Cutting back high-cost disbursements to CETCs, while leaving disbursements to ILECs undisturbed, would impair competitive entry and the delivery of services by CETCs in competition with ILECs.

For these reasons, the Commission must conclude that the cap proposed by the Joint Board would not serve the public interest and therefore must be rejected.

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COMMENTS OF RURAL CELLULAR ASSOCIATION AND THE ALLIANCE OF RURAL CMRS CARRIERS

Rural Cellular Association ("RCA"), [1] and the Alliance of Rural CMRS Carriers ("ARC"),[2] by counsel and pursuant to the Commission's *Notice of Proposed Rulemaking,* FCC 07-88 (released May 14, 2007) hereby provide comments on the *Recommended Decision* of the Federal-State Joint Board on Universal Service ("Joint Board"), FCC 07J-1 (released May 1, 2007) ("*Recommended Decision*"), proposing an "interim, emergency cap" on high-cost support to Competitive Eligible Telecommunications Carriers ("CETCs").[3]

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[1] RCA is an association representing the interests of approximately 100 small and rural wireless licensees providing commercial services to subscribers throughout the nation. RCA's wireless carriers operate in rural markets and in a few small metropolitan areas. No member has as many as 1 million customers, and all but two of RCA's members serve fewer than 500,000 customers.

[2] ARC is a group of CMRS carriers who are licensed to serve rural areas in Colorado, Nebraska, Guam, Wisconsin, Alabama, Mississippi, West Virginia and South Carolina. ARC's membership is comprised of the following carriers (or their subsidiaries): Cellular South Licenses, Inc., Guam Cellular and Paging, Inc., N.E. Colorado Cellular, Inc., Easterbrooke Cellular Corp., Airadigm PCS, Hargray Wireless and the Cellcom Companies.

[3] *Recommended Decision* at para. 1. These comments are filed within 14 days after publication in the Federal Register. *See Comment Cycle Established for Commission's Notice of Proposed Rulemaking Regarding an Interim Cap on High-Cost Universal Service Support for Competitive Eligible Telecommunications Carriers*, WC Docket No. 05-337, CC Docket No. 96-45, FCC Public Notice, DA 07-2149 (rel. May 23, 2007).

RCA and ARC members provide PCS and cellular services in numerous small and rural markets throughout the country. Many of their members have received ETC status and currently receive high-cost support for their operations, while others have applications pending for ETC status and have not yet received high-cost support. And some RCA members have interest in pursuing ETC status or applying to modify the area where support is received.

I. INTRODUCTION

The Joint Board's recommendations could scarcely be more at odds with the 1996 Act,[4] which promised to preserve ***and advance*** universal service, consistent with the goal of bringing competition to all Americans, not just those in urban areas. Among "the four critical goals set forth for the new universal service program" the Commission identified "that the benefits of competition be brought to as many consumers as possible."[5] The cap proposed by the Joint Board in the *Recommended Decision* would directly conflict with this critical goal.

The *Recommended Decision* is quick to sound the alarm that immediate and drastic action is needed to salvage the viability of the high-cost fund. But the Joint Board provides no factual analysis to support its conclusory statements that there is an "emergency." After adopting rules that do not cause incumbent local exchange carriers ("ILECs") to lose support when consumers choose a CETC's service, the current state of affairs cannot be a surprise to the Commission, which has now failed to adopt any meaningful universal service reform of the distribution mechanism for six years.

The Joint Board, understanding that a convincing story line is needed to justify a cap that is so inherently and obviously unfair to carriers competing against ILECs, attempts to build a

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

[5] *Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration*, 13 FCC Rcd 5318, 5321-22, para. 2 (1997) ("*Fourth Reconsideration Order*").

case that the high-cost fund is in "dire jeopardy of becoming unsustainable."[6] But the Joint Board's case is largely constructed on projections of CETC funding levels that are unsupported and unexplained and relies on a 2% jump in the contribution factor which the Commission now admits to have very little to do with rising support levels. As shown below, there is no "emergency" and the appropriate response is to do what the statute requires—make support fully portable.

There is absolutely no evidence that *consumers* are being harmed by the increase in funding to CETCs. In fact, available evidence suggests the opposite—that consumers are benefiting from the Commission's decision to remove implicit subsidies from rates and move them into an explicit federal universal service program. Wherever wireless service is available, consumers are seeing a dramatic drop in the price of wireless telephone service, to the point where wireless is now significantly cheaper than wireline service. This is evidenced by the fact that "cord-cutting" is most common among low-income groups.[7]

In many rural areas where wireless service is improving as a result of new competitive entry and universal service support, consumers are seeing the same benefits. However, the *Recommended Decision* completely ignores the interests of rural consumers who have not yet experienced the robust wireless telecommunications service that results from CETCs building new infrastructure with high-cost support. For these consumers, who pay into the USF, the substantial economic development benefits of having a modern telecommunications infrastructure available remain an unfulfilled promise, some eleven years after the 1996 Act.

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[6] *Recommended Decision* at para. 4.

[7] *See* Stephen J. Blumberg & Julian V. Luke, *Wireless Substitution: Early Release of Estimates Based on Data from the National Health Interview Survey, July – December 2006*, Division of Health Interview Statistics, National Center for Health Statistics, Centers for Disease Control and Prevention, May 14, 2007 ("*CDC Report*"), http://www.cdc.gov/nchs/nhis.htm (accessed May 31, 2007), at 2.

The *Recommended Decision* amounts to an unintended but significant assault on public safety and homeland security. Rural Americans depend on their wireless phones as much as, or more than, urban consumers. Time after time, wireless phones are a critical link for Americans caught in natural and man-made disasters. Law enforcement and emergency medical technicians rely on commercial wireless networks for critical communications needs. A cap would impede the ability of many carriers to build new towers in rural America.

As anyone who travels in rural America understands, there is much work to be done to knit together the kind of network that consumers can depend on everywhere they live, work, and play. The Commission has required wireless carriers to collectively spend hundreds of millions, if not billions, of dollars upgrading wireless networks to meet E-911 requirements. It is inconceivable that the Commission would now slow down the pace of construction, when new cell sites in rural areas would enable regular 911 calls to be completed and enable E-911 functionality to be useful to more people in more communities.

Finally, and significantly, the Joint Board makes the categorical assertion that its proposed cap does not violate the Commission's core principle of competitive neutrality, but the *Recommended Decision* makes virtually no attempt to explain how a proposal that is competitively biased on its face can somehow be considered consistent with the Commission's principle.

For these and many other reasons set forth below, the Commission should decline to adopt a cap and proceed expeditiously to reform universal service consistent with the 1996 Act and the agency's longstanding precedents.

II. THE JOINT BOARD FAILS TO DEMONSTRATE THAT AN INTERIM CAP IS NECESSARY TO PRESERVE AND ADVANCE UNIVERSAL SERVICE

The Joint Board, in order to justify its proposed cap, must explain why it believes the fund is in imminent danger of becoming unsustainable (indeed there is not even a definition of what "unsustainable" means), and why the proposed cap would cure this perceived problem. The need for such an explanation is heightened because (i) the proposed cap would give a clear advantage to ILECs by limiting only CETC disbursements from the fund, (ii) the cap would adversely affect consumers by suppressing competitive entry and hampering CETCs' provision of services, and (iii) there are serious concerns that the cap is an unwarranted and harmful distraction from the Joint Board's and the Commission's main task of completing work on long-term universal service reform.

The only explanation the Joint Board provides is that "[h]igh-cost support has been rapidly increasing in recent years . . ." and that growth is estimated to continue through the next two years.[8] This is not convincing, especially in light of the Joint Board's apparent and unsupported belief that the fund will become unsustainable before the Joint Board and the Commission complete their work on universal service reform.

A. There Is No Evidence a Cap Is Needed.

Given that the cap, as proposed by the Joint Board, would be in place for only 18 months, the Joint Board must demonstrate that the danger to the high-cost fund is so palpable, immediate, and severe that the fund could not survive the *status quo* for 18 months while the Joint Board and the Commission implement the "comprehensive and fundamental universal service reform" promised by the Joint Board.[9]

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[8] *Recommended Decision* at para. 4.

[9] *Id.* at para. 8.

The Joint Board argues that an immediate, interim cap is necessary because the fund "is in dire jeopardy of becoming unsustainable."[10] In support of this conclusion, the Joint Board makes three points. First, the most recent contribution factor of 11.7 percent is the highest level ever.[11] Second, CETC disbursements are projected to continue growing through 2009. And third, most of the growth in the fund in recent years has been driven by CETC disbursements, which in turn have been a result of CETCs' receiving funds based on ILEC per-line support instead of the CETCs' own costs.[12]

The Joint Board provides no explanation of the methodology or assumptions used to support its conclusion that "[h]igh-cost support to competitive ETCs is estimated to grow to almost $2 billion in 2008 and $2.5 billion in 2009 even without additional competitive ETC designations in 2008 and 2009."[13] Given the fact that the Joint Board is apparently basing its defense of the proposed cap on the magnitude of these projected increases in the size of the fund, it is disappointing that the Joint Board has chosen not to share with the public the calculations lying behind the curtain of these estimates.[14]

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[10] *Id.* at para. 4.

[11] *Id.* at para. 4 n.11. The Joint Board's panic about the 2% increase in the contribution factor might have been quelled if the Joint Board had been privy to Chairman Martin's explanation that at least three-quarters of the increase has absolutely nothing to do with upward pressures on high-cost support. *See* Letter from Kevin J. Martin, Chairman, FCC, to Edward J. Markey, Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, U.S. House of Representatives (rel. May 14, 2007), Attachment ("Responses to Chairman Markey's April 2, 2007, Letter") ("Chairman Martin Letter") at 1. Both Representative Markey's letter and Chairman Martin's response may be viewed at: http://markey.house.gov/index.php?option=com_content&task=view&id=2825&Itemid=46. Chairman Martin's explanation undercuts the Joint Board's reliance on the 2% increase to support its claim that the fund is in "dire jeopardy of becoming unsustainable." The matter of the 2% increase is discussed further in Section II.B., *infra*.

[12] The Joint Board recommends the cap "largely because" of its conclusion that the identical support rule is outdated and may no longer be appropriate. *Recommended Decision* at para. 7. (As shown above, this third statement is erroneous in that the failure to fully implement portability is the cause.)

[13] *Id.* at para. 4. The Joint Board also projects that the level of the fund could rise to $1.56 billion in 2007 if the Commission were to approve all currently pending ETC designation petitions. *Id.*

[14] The estimates apparently have their origin in "charts presented by Chairman Martin" at an *en banc* Joint Board hearing in February of this year. *Id.* at para. 4 n.16. The charts, which are included in Appendix A of the *Recommended Decision*, provide no information about the development of the estimates, nor did Chairman Martin

The Joint Board's estimates of support to ETCs in 2008 and 2009, which amount to increases of 31% and 30%, respectively, over previous years, are puzzling in light of the Joint Board's indication that this growth is projected even in the absence of any CETC designations in those years. Although the Joint Board provides no explanation, one can only infer that these estimates are based on projections of rising line counts for currently designated CETCs. Given the fact that new CETC designations have played a significant part in past fund growth,[15] it becomes even more critical for the public to understand the basis for the Joint Board's predictions and to have an opportunity to test and comment on the validity of the methodology and assumptions that generated the Joint Board's estimates.

The Joint Board also makes no attempt to explain what it means when it says the fund could become "unsustainable," or why it is convinced that the fund will reach this condition sometime during the next 18 months, absent a CETC cap. The Joint Board presumes in the *Recommended Decision* that long-term reform of the high-cost fund will be in place by the end of October 2008. Thus, under the Joint Board's own assumptions, we can take as a given that, by the end of next year, there no longer will be any upward pressure on the fund's support levels.

If we accept the Joint Board's assumptions regarding the timetable for reform, then why is a cap needed? Even if we assume that the Joint Board is correct that high-cost support to CETCs will grow to almost $2 billion by the end of next year (even though, of course, the Joint

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in his opening remarks at the *en banc* hearing. *See* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-271011A1.pdf (accessed May 31, 2007).

[15] According to USAC's annual reports, the number of CETC "study areas" increased from 349 in 2005 to 419 in 2006. USAC's projections list 436 CETC study areas for Second Quarter 2007. Annual reports are available at: http://www.usac.org/about/governance/annual-reports/. Second Quarter 2007 projections are available at: http://www.usac.org/about/governance/fcc-filings/2007/quarter-2.aspx. Based on USAC's disbursement data, just six of the new CETC designations occurring in 2005-2006 resulted in more than $45 million in new high-cost support in 2006. Additionally, AT&T Wireless Services received more than $57 million in Mississippi, more than ***ten times*** what it received in 2005. Increases of this magnitude cannot be assumed for future years. *See* http://www.usac.org/hc/tools/disbursements/default.aspx.

Board has not explained the basis for this projection), what compels a conclusion that this level of support would cause the fund to cease being "sustainable"?

Given that reform of the distribution mechanism is long overdue, the Joint Board not surprisingly found it prudent to come up with a deadline for action. But, in recommending this deadline, the Joint Board appears to be hoisted by its own petard, since it fails to demonstrate that the fund will somehow become "unsustainable" before the end of the 18-month period. If a solution will be in place by the end of next year, as asserted by the Joint Board, then there is no need for the Joint Board's draconian and anti-competitive cap.

B. The Fund Is Not Experiencing "Explosive" Growth as a Result of Funding to CETCs.

When facts are properly considered, the Joint Board's rhetoric that the high-cost fund is experiencing "explosive" growth as a result of CETC designations is demonstrably incorrect.

- From publicly available data, we calculate that three-quarters of the 2.0% increase in the contribution factor from 9.7% to 11.7% was as a result of true-up mechanisms within the program (1.5% of 2.0%). Only one-tenth of the 2.0% increase was due to increased high-cost support. This is consistent with Chairman Martin's statement last month in response to an inquiry from Representative Edward Markey.[16] See Exhibit 1 (Causes of Increase in USF Contribution Factor (First Quarter 2007 to Second Quarter 2007)).

- Universal Service Administrative Company ("USAC") projections between the fourth quarter of 2006 and the second quarter of 2007 show high-cost support

[16] Chairman Martin Letter at 1:

> Several factors contributed to the two percent increase of the contribution factor for the second quarter of 2007. The largest single factor was prior period adjustments that acted to reduce the Universal Service Fund's revenue requirements in previous quarters. Specifically, these prior period adjustments arose from additional contributions made by AT&T and Verizon on past under-reported revenue, and from a change in the amount of funds that the Universal Service Administrative Company held in reserve for bad debts. The absence of these prior period adjustments caused a 1.5 percent increase in the contributions factor. The remaining 0.5 percent of the increase was due to reductions in the funding base, increases in program demand, including for high-cost support.

rising 3.9%.[17] This is a much lower rate of growth than prior periods, suggesting that the growth rate is slowing.

- *Although the Joint Board tries to paint an alarming picture of threats to the fund* posed by significant percentage increases in CETC support, these percentage increases in annual growth rates are largely a product of the fact that CETCs are new entrants who started with a baseline of zero support from the fund. As competitive entry has advanced, CETCs' share of the fund has increased correspondingly.

- While the Joint Board claims that an "emergency" has been caused by recent growth in the fund, the Joint Board ignores the fact that the fund historically has weathered significant growth rates without becoming "unsustainable." Support to ILECs jumped from $1.7 billion in 1999 to $3.1 billion in 2003, and continued to increase from 2003 to 2005. Support to ILECs was growing during these periods even though ILEC line counts were decreasing.

Finally, as shown below, the Commission's own decisions have purposefully—and properly—allowed the fund to grow as a result of competitive entry.

C. Fund Growth Was Anticipated.

The Joint Board's implication that fund growth was somehow not anticipated indicates a lack of institutional memory dating back to the Commission's voluminous actions between 1996 and 2001. In fact, fund growth to current levels has always been anticipated as a result of several Commission decisions:

- *Fulfilling Congress' mandate to move implicit support from carrier rates into an explicit program.* Since 1996, the bulk of support that wireline carriers receive today has been removed from rates and placed into the fund. While this constitutes fund growth, it does not constitute increased consumer cost, as rates for interstate services (*e.g.*, long distance and wireless) have fallen due to regulatory mandates or the positive effects of competition.

- *The Commission's decision not to fully implement portability.* There was never a requirement that the fund grow beyond the amount of support moved from carrier rates into the explicit fund. Indeed, the Commission's initial decision was to make funding fully portable so that ILECs would lose support when they lose a customer. But the Commission reversed that decision and currently allows ILECs

[17] *Proposed Fourth Quarter 2006 Universal Service Contribution Factor,* CC Docket No. 96-45, DA 06-1812, FCC Public Notice (rel. Sept. 11, 2006); *Proposed Second Quarter 2007 Universal Service Contribution Factor,* CC Docket No. 96-45, DA 07-1330, FCC Public Notice (rel. Mar. 15, 2007).

to keep all of their support, even if they lose all but one of their customers. This decision has fueled ***all*** of the growth in the fund because, with full portability, there would be ***no*** growth in the fund ***no matter how many CETCs were designated***. The Commission not only anticipated fund growth when it made this decision, it ensured it.

- *Continuing the modified embedded cost methodology for providing support to wireline carriers.* As many experts have testified, providing federal funds to carriers on a "the more you spend, the more you get" basis only invites waste and inefficiency, which have now been well-documented in scholarly works and the press.[18]

- *The decision **not** to require ILECs to disaggregate support.* The lack of disaggregation has provided significant support dollars to CETCs in relatively low-cost areas, which only invites carriers already serving there to apply. Our anecdotal experience is that support ***to CETCs*** could be reduced by 10% to 30% if all rural ILECs were required to disaggregate to the wire center level.

Thus, as consumers and telecommunications service providers continue to wait for the Joint Board and the Commission finally to adopt universal service reform, it should be emphasized that this reform—if done correctly—will solve the issue of growth in the high-cost fund by addressing the principal drivers of fund growth discussed above.[19] In the meantime, the

[18] The Commission, of course, intended that the modified embedded cost methodology would be used only as a transitional mechanism for rural ILECs:

> As we stated in the *Order* [the *First Report and Order*], we ultimately intend to determine universal service support for all carriers using a forward-looking economic cost model because such a model will require carriers to operate efficiently and will facilitate the move to competition in all telecommunications markets. We decided, however, that we would "retain many features of the current support mechanisms" in order to provide rural LECs, generally the recipients of LTS [Long Term Support], sufficient time to adjust to any changes in universal service support, particularly a move to a forward-looking economic cost model for determining universal service support.

Fourth Reconsideration Order, 13 FCC Rcd at 5362, para. 74 (footnotes omitted).

[19] The Joint Board recently solicited additional comments in the above-captioned proceeding, asking interested parties to comment on various proposals to reform the high-cost universal service support mechanisms. *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45, FCC Public Notice, FCC 07J-2, May 1, 2007. U.S. Cellular and RCC jointly submitted comments in response to the Public Notice on May 31, 2007. In these comments we proposed several measures that would achieve the ongoing sustainability of the high-cost fund while also ensuring that consumers in rural and high-cost areas will receive the benefits of accelerated wireless infrastructure development. Specifically, we demonstrated that three steps are critical to accomplishing comprehensive universal service reform that will benefit consumers as intended by the Act. First, support to all carriers should be provided based on the costs of constructing and operating an efficient network. Replacement of the modified embedded cost methodology will finally erase incentives for ILECs' inefficient operation of facilities

Joint Board evidences a lack of institutional memory and a lack of understanding of the Commission's precedents when it claims that immediate restraint of CETC funding is necessary to save the fund from "dire jeopardy".

Finally, there is an additional aspect of fund growth which was anticipated and which the Joint Board ignores with pernicious effect in the *Recommended Decision*. The Joint Board is quick to assign the role of villain to CETCs. But, in addition to failing to make a persuasive case that CETCs must bear the brunt of responsibility for fund growth, and failing to support or explain the projections purporting to show substantial growth in CETC support over the next two years, the Joint Board takes no account of the fact that fund growth caused by CETC designations and market entry was purposefully permitted, fully anticipated, and reflects the effectiveness of Commission policies.

Growth in fund support to CETCs simply demonstrates "that the process of ETC qualification and provisioning of qualified lines by CETCs is working exactly as intended. . . . Under the current mechanism, growth in the support to CETCs is in significant part a measure of growth in new investment in rural areas."[20] Thus, absent a compelling showing that consumer welfare faces an immediate and crippling blow as a result of projected high-cost fund growth, there is no basis for the Joint Board's proposal to shut down the mechanism that is fueling this new investment. A much more rational and pro-consumer public policy would be to stay the

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and networks in rural and high-cost areas. *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, Comments of United States Cellular Corporation and Rural Cellular Corporation, May 31, 2007 ("Joint Comments") at 6-10. Second, high-cost support must be made fully portable. A rule providing that ILECs will no longer receive high-cost support associated with customers who switch to other carriers would guard against high-cost fund growth by increasing ILECs' incentives to operate efficiently. *Id.* at 11-12. And third, high-cost support to rural ILECs must be provided on a disaggregated basis upon market entry by competing carriers. More accurate targeting of support through disaggregation, in addition to providing greater incentives to construct facilities in high-cost wire centers, would also result in reduced support to CETCs, thus curtailing fund growth. *Id.* at 19-21.

[20] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Rural Cellular Association and the Alliance of Rural CMRS Carriers, May 5, 2003, Exhibit 1 (Don J. Wood, "Effective Long Run Management of the High-Cost Universal Service Support Mechanism") ("*Wood Paper*") at 7.

course (thus permitting competition to proceed unimpeded by the proposed cap) and to complete work on long-term reform.

III. THE JOINT BOARD MAKES NO SHOWING THAT CONSUMERS WOULD BE HARMED BY CONTINUED GROWTH IN THE HIGH-COST FUND

Universal service decisions must focus on the consumer, not any individual companies or classes of carriers. "Because universal service is funded . . . indirectly by the customers[,] excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some customers out of the market."[21] In order for a Commission decision to clear the bar of arbitrary and capricious rulemaking, the agency must demonstrate that its projected high-cost fund growth—if left unchecked—will in fact have a severe impact on customer rates, which in turn will "detract from universal service."[22] The consumer costs imposed by rising contributions levels also must be measured against corresponding consumer benefits derived from the distribution of those contributions. The Joint Board, of course, did not attempt such a showing in its *Recommended Decision*.

In evaluating the credibility of the Joint Board's claims that rising costs are posing a dire threat to the sustainability of the fund, the only relevant analysis is an assessment of the impact of these rising costs on consumers. Based on such an analysis, available evidence leads to the conclusion that, even accepting the Joint Board's unsupported assumptions, projected high-cost fund growth will not have any significant adverse impact on customer rates.

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[21] *Alenco Communications v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) ("*Alenco*"). The court also concluded that "[t]he Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act . . . ." *Id.* (emphasis in original).

[22] *Id.*

A. The Cost of Contributions Will Not Rise Significantly Even if the Joint Board's Undocumented Assumptions Are Accepted.

Today, a wireless consumer with a $50.00 monthly bill contributes about $2.17 to the Universal Service Fund ("USF"),[23] of which only 32 cents (or 0.6% of the total bill) goes to CETC high-cost support.[24] If we accept the Joint Board's (undocumented) projection that the level of CETC support will double to $2 billion next year (and ILEC support remains constant, despite the continuing loss of ILEC lines), this same consumer would pay a federal USF charge of $2.48—an increase of only 31 cents.

Thus, from a consumer's perspective, even assuming the Joint Board's most dire (and undocumented) projections, there is no basis to conclude that the fund will be "unsustainable" by the end of next year unless CETC disbursements are capped. Any negative consumer impacts would be further mitigated by the fact that low-income consumers who qualify for federal Lifeline benefits—in other words, those most likely to be affected by a 31-cent increase—do not contribute to universal service mechanisms.

The Joint Board presents no information showing that overall increases in the size of the high-cost fund are a pocketbook issue for consumers. All the available evidence demonstrates the contrary. For example, Consumer Price Index ("CPI") data shows that, from 1995 through 2005, the annual rate of change for all goods and services was 2.5%, while the annual rate of change for all telephone services was -0.2%. In 2005, CPI for all goods and services rose 3.4%, while the increase for all telephone services was only 0.4%.[25] In addition, consumers are spending proportionately less today for telephone services than they were before the 1996 Act and the growth of competition. Spending for all types of telephone service in 1995 (including

[23] $50.00 x 37.1% safe harbor x 11.7% = $2.17.

[24] This example applies equally to a wireline consumer with $18-$19 per month in interstate usage.

[25] Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report*, Table 7.2 (2006).

local, long distance, and wireless service) amounted to 1.7% of spending for all consumer goods and services. In 2005, consumer spending for these same telephone services accounted for 1.6% of overall consumer spending.[26]

Other telephone pricing trends illustrate that growth in the high-cost fund is not likely to have severe consequences for consumers. In recent years, average wireline residential local and interstate/international long distance telephone bills have been steadily declining, even taking into account the USF surcharge. Specifically, average monthly combined charges for local and interstate/international long distance telephone service, which amounted to approximately $42 in 1995, declined to approximately $28 in 2004 (the most recent year for which average bills can be calculated).[27] The local portion of these monthly bills remained approximately the same over this 10-year period, while the long distance portion shrank from approximately $15 per month to approximately $3.00 per month.[28]

In addition, treating December 1997 as a base index of 100, the following trends occurred between December 2000 and December 2005: (i) CPI for all goods and services ***increased*** from 107.9 to 122.0; (ii) CPI for all telephone services ***decreased*** from 98.4 to 95.2; (iii) CPI for wireless services ***decreased*** from 71.1 to 64.6; and (iv) CPI for landline local services ***increased*** from 110.0 to 129.5.[29]

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[26] FCC, *Trends in Telephone Service*, Table 3.3 (Feb. 2007) ("*Trends Report*").

[27] Average monthly charges for residential local service were taken from the *Trends Report* at Table 13.3 (Average Rate for a Residential Access Line). Average monthly charges for residential interstate and international long distance service were calculated by multiplying average revenue per minute in a given year by the average monthly interstate and international long distance minutes of use for the same year. *See Trends Report* at Tables 13.4 (Average Revenue Per Minute), 14.2 (Average Residential Wireline Monthly Toll Minutes).

[28] A chart illustrating the discussion above is attached as Exhibit 2

[29] Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report*, Table 7.4 (2006).

Wireless prices in particular demonstrate that any upward pricing pressure that may be caused by increases in the size of the high-cost fund is more than offset by the effects of a competitive marketplace. Wireless prices (reflected by average cost per minute) have dropped by as much as 20% to 30% ***per year*** between 1998 and 2005. The overall decline in revenues per minute for wireless services from 1993 through 2005 was 84.1%. Average monthly bills for wireless services fell by 18.7% from 1993 through 2005.[30]

Thus, with the exception of landline local services (which historically have been provided by monopoly carriers), telephone services generally, and wireless services in particular, have declined with the growth of competition. This compelling evidence contradicts the Joint Board's claim that the high-cost fund is in "dire jeopardy of becoming unsustainable" Moreover, the data recited above illustrates that increases in the size of the fund are not likely to cause consumer impacts that would warrant the harsh "remedy" proposed by the Joint Board.

B. The Projected Increase in Contributions Is More Than Offset by Direct Benefits That Universal Service Investments Deliver to Consumers.

The entire purpose of the 1996 Act was to introduce competition throughout the country so as to lower prices and increase choices for consumers. The universal service provisions, requiring support to be explicit, and portable to all eligible carriers using any technology, are entirely consistent with these purposes. As discussed above, the potential (worst case) effect of uncapped support distributions to CETCs over the next year is known, and cannot be shown to cause any significant harm to consumer welfare. However, the Joint Board's analysis completely ignores the substantial corresponding consumer benefits that competition has delivered—***in every area where meaningful competition exists.*** This is a critical point:

[30] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993–Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Eleventh Report,* 21 FCC Rcd 10947 (2006), App. A, Table 10.

Meaningful competition ***does not*** exist in rural areas where wireless network service quality is not sufficient to provide consumers with a viable substitute for wireline service.

The Commission's own data confirms this. An examination of the quantifiable consumer benefits of competition produces compelling figures. Between 1995 and 2005, the average cost per minute for wireless service has dropped from 43 cents per minute to 7 cents per minute.[31] Factoring in the current 11.7% contribution factor, the cost of a wireless call would be 7.8 cents per minute. Competitive forces have not only driven down prices, they have driven the average number of wireless minutes per month upward from 119 minutes to 740 minutes over the same period.[32] From this, it is easy to conclude that the price of telephone service for wireless consumers, who contribute more to the USF than any other class of consumers, has decreased dramatically, even when including the increase in the contribution factor.[33]

Rather than touting "explosive" growth, the Joint Board would have more accurately proclaimed the "dramatic" decrease in consumer rates and the "dramatic" increase in the quantity of service that wireless consumers are receiving as a result of competition. The Joint Board should have committed to accelerating universal service reform in rural areas to drive the benefits of competition that Americans living in urban areas now take for granted.

IV. RURAL CONSUMERS WILL BE HARMED IF A CAP ON CETC SUPPORT IS IMPOSED

There remains a further deficiency in the Joint Board's proposal that has serious implications not only for the availability of telecommunications services in rural and high-cost areas, but also for the health and safety of people residing in those areas. Common sense, as well as ample evidence, tells us that wireless technology and services are particularly well suited to

[31] *Id.*

[32] *Id.*

[33] Please see Exhibit 3 attached hereto.

render assistance in emergency situations in rural areas. All of us know about—and some of us may have experienced—the lifeline that cell phones can provide in the midst of emergencies and disasters.

The capability of wireless carriers to render these services, however, is dependent upon the deployment of infrastructure. And here lies the danger posed by the Joint Board's recommendation. It is a fact that imposition of the cap would slow, and in some cases halt, the efforts of wireless carriers to build out networks in rural and high-cost areas. Reduced levels of support, and the absence of any support in states in which no CETCs received any support in 2006, would translate into reduced investment in wireless networks. And this reduced investment would have real and severe consequences for the availability of emergency communications services for people living in rural and high-cost areas.

Apart from the serious public health and safety risks posed by the Joint Board's recommendation, the competitive harm that the cap would impose means that consumers in rural and high-cost areas, who have shown an increasing inclination to drop their wireline service and rely exclusively on wireless for their communications needs,[34] would be robbed of wireless alternatives. Draining away high-cost support from CETCs will harm consumers.

A. Denying Wireless Carriers the Ability to Invest in New Cell Sites Amounts to a Fundamental Assault on Public Safety in Rural Areas.

Today, wireless service is a critical link in public safety and homeland security. It is not exaggerating to say that a cell phone is the single most important safety tool a consumer can have. The public safety uses for a cell phone are too numerous to list. There are now literally

[34] *See CDC Report* at 7 (Table 2) (the percentage of adults in non-metropolitan areas with only wireless telephones has increased from 1.8% in the first half of 2003 to 8.0% in the second half of 2006).

thousands of stories of lives saved with cell phones, and lives lost when a phone (or adequate service) is unavailable.

People living in areas with high-quality wireless service have high expectations that a phone can be used in an emergency, which does not usually happen within easy reach of the wireline phone attached to the kitchen wall. They expect their children of driving age to be able to access emergency services if needed. They expect 911 and E-911 services to function. They expect to be able to use the phone when they travel or are displaced by a natural or man-made disaster.

Rural consumers share these desires, but sadly, many have much lower expectations. In Maine, 34 consumers and public safety officials submitted testimony describing the need for improved wireless service. We have attached as Exhibit 5 copies of their testimonies, which formed the basis for a grant of ETC status to a United States Cellular Corporation ("U.S. Cellular") subsidiary.[35] In the above-referenced docket, more than a thousand consumers have submitted brief comments opposing the Joint Board's proposed cap for various reasons, including most prominently the need for improved wireless service in rural areas.

The need for wireless service is further highlighted by the dramatic decrease in pay phones in our Nation's rural areas. According to the Commission's most recent *Trends Report*,[36] the number of pay phones in rural areas dropped by more than half between 1999 and 2006, at least partially as a result of consumers increasingly relying on wireless phones.[37] But in areas where wireless service is poor, the ability to complete an important call when away from home,

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[35] While U.S. Cellular is not a member of RCA or ARC, the circumstances relating to its subsidiaries' CETC designations are relevant to these comments.

[36] *See Trends Report* at Table 7.6.

[37] *See* Exhibit 4 attached hereto.

or to report an emergency, is greatly reduced. Some small towns report that they do not have a single pay phone operating in their area.[38]

The ability of wireless networks to rapidly recover from disasters is now well known. U.S. Cellular recently experienced significant weather disasters in Missouri, Washington, and Oregon. In each case, the vast majority of the company's infrastructure survived and it was able to restore service due to electrical outages within hours—not days—by delivering portable diesel generators to affected cell sites.[39]

In the recent tornado that leveled Greensburg, Kansas, Rural Cellular Corporation ("RCC")[40] reports that its main cell site serving the town survived the storm and remained on the air due to a combination of battery backup and a diesel generator, immediately providing first responders and displaced citizens with vital communications services. The wireline network serving Greensburg was decimated.

In Mississippi, rural consumers have benefited from universal service funding. Cellular South[41] was designated as an ETC in 2001. As a result of the company's ability to invest

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[38] *See, e.g.,* testimony of Mr. Middleton in the application of N.E. Colorado Cellular to be an ETC in Nebraska, Docket No. C-3324, Transcript of Public Hearing in McCook, Nebraska, (July 18, 2005) ("McCook Hearing Transcript") at p. 260.

[39] *See also Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, EB Docket No. 06-119, Comments of CTIA–The Wireless Association®, Aug. 7, 2006, at ii-iii:

> [P]rior to Hurricane Katrina, wireless carriers had pre-positioned portable cell sites, back-up generators, fuel, other equipment, and personnel, in areas close to the predicted impact area . . . . As a result of these preparations, wireless carriers were able to quickly move equipment and personnel into damaged areas. In addition, despite many complications, the wireless industry was able to repair damaged cell sites and switches; put up new cell sites; distribute over 25,000 wireless phones to individuals in the affected area; provide the public with free battery charging, calling and technical support; provide evacuees with temporary telecommunications capabilities; provide priority access to public safety personnel; supply emergency communications trailers, generators, and other equipment to public safety officials and emergency first responders on the ground; and suspend bill collection efforts, among other things.

[40] RCC is a member of RCA and of ARC.

[41] Cellular South is a member of RCA and of ARC.

available support, the state had a robust network in rural areas that formed a critical component of disaster response in the wake of Hurricane Katrina.[42] Literally hundreds of thousands of people who evacuated the coast northward into Mississippi's rural areas were able to use their wireless phones as a result of infrastructure investments made with high-cost support.[43]

In each of these cases, the benefits to consumers—who were able to communicate at such difficult times—are above calculation. It is thus beyond any sensible analysis why the Commission would endorse any proposal that would wholesale deny such benefits to any community that has poor wireline service that could be improved by a CETC's ability to construct new facilities.

Such a decision would be even more egregious in states such as Illinois, Missouri, Idaho, South Carolina, and Ohio—each of which has substantial rural areas and little or no support flowing to wireless carriers from the high-cost fund. Worse yet, wireline carriers in each state take in tens of millions to support wireline networks that were constructed decades ago, without meaningful accountability for their use of support, and without the ability to deliver to consumers the benefits of mobile wireless technology that they so clearly prefer.

In Illinois, U.S. Cellular has promised to deliver over 120 cell sites with high-cost support within the first five years after it is designated, over and above investments it will make with internally generated capital.[44]

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[42] Pursuant to Mississippi law, the company meets with the Public Utility Commission four times per year to outline how support is being invested for the benefit if Mississippi consumers. No such accountability is required for wireline carriers.

[43] A copy of a resolution from the Mississippi Legislature citing the company's outstanding response is attached as Exhibit 6.

[44] *See* Application of U.S. Cellular's subsidiary companies before the Illinois Commerce Commission to be an eligible telecommunications carrier in Docket No. 04-0653.